

DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Part 806

RIN 2900-AQ21

VA Acquisition Regulation: Competition Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in Federal Acquisition Regulation (FAR), to remove procedural guidance that is internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the Federal Register. VA will combine related topics, as appropriate. In particular, this rulemaking revises the VAAR concerning Competition Requirements.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER] to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1063B, Washington,

DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to “RIN 2900-AQ21

VA Acquisition Regulation: Competition Requirements.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in VA Acquisition Manual (VAAM) as internal departmental guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. Therefore, the VAAM will not be finalized until corresponding VAAR parts are finalized, and the VAAM is not yet available on line.

VAAR Part 806—Competition Requirements

This proposed rule would revise the authority citations pertaining to part 806 to include a reference to 41 U.S.C. 1121(c)(3), which is from Title 41, Public Contracts, and speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 806 authorities to add 41 U.S.C 1303, an updated positive law codification to reflect additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA, and to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer.

We also propose to include a reference to 41 U.S.C. 3304 as the basic authority to award contracts by other than full and open competition. Any other proposed changes to authorities or additional authorities are shown under the individual sections as described in the preamble and reflected in the amendatory language. We also propose to remove 38 U.S.C. 501 as it is a more general authority for the Secretary to utilize to prescribe all rules and regulations. The title 41 authority is more appropriate to cite when publishing the VAAR.

We propose to add 806.004-70, Definition, to establish that as used in part 806, "health-care resource(s)" has the same definition as that provided in VAAR 873.102. VAAR 873.102 provides that "health-care resource" includes hospital care and medical

services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space. (38 U.S.C. 8153). A future rule may contain revisions to VAAR part 873 which also might include any updated definition for “health-care resource.”

We propose to add subpart 806.1—Full and Open Competition, and section 806.102, Use of competitive procedures, to address the application of 38 U.S.C. 8127 to competitive General Services Administration (GSA) and VA Federal Supply Schedules.

We propose to add subpart 806.2—Full and Open Competition After Exclusion of Sources, which would contain two sections: 806.203, Set-asides for small business concerns, which directs attention to subparts 819.5 and 819.70 for VA’s policies on set-asides for small business concerns, and 806.270, Set-asides for verified Veteran-owned small businesses.

In 806.270, we propose to set-forth VA’s authority under VA’s supplement to FAR part 6—VAAR part 806, and the requirement mandated by 38 U.S.C. 8127, to conduct set-asides for Veteran-owned small businesses whenever market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from eligible and verified service-disabled veteran-owned small businesses (SDVOSBs) or veteran-owned small businesses (VOSBs), and award can be made at a fair and reasonable price that offers best value to the Government (VA Rule of Two). This section would also state that the requirement to set aside procurements for Veteran-owned small businesses applies to all contracts under this regulation, including orders under interagency acquisition vehicles such as the Federal Supply Schedules (FSS),

Governmentwide acquisition contracts (GWACs), and multi-agency contracts. We propose to also include language in paragraph (c) that contracting officers shall utilize the authority in paragraph (a), for set-asides to verified SDVOSBs and VOSBs, over other set-asides authorized in FAR subpart 6.2. The reason is the statutory requirement in 38 U.S.C. 8127-8128 for the VA Rule of Two which provides VA a unique authority for set-asides that includes both categories of Veteran-owned small businesses. While FAR 6.206, Set-asides for service-disabled veteran-owned small business concerns, does provide for an SDVOSB set-aside, SDVOSBs who may receive contract awards under that authority self-represent their status, whereas eligibility for and participation in the VA SDVOSB set-aside program requires verification and inclusion in the VA, Office of Small and Disadvantaged Business Utilization (OSDBU), Center for Verification and Evaluation, Vendor Information Pages (VIP). Additionally, the FAR does not have a specific set-aside program for VOSBs, while VA does, which also requires that in order to be eligible for and to participate in the program, VOSBs must also go through a thorough verification program and be included in VA OSBDU's VIP. This section also proposes to include language that would provide that for Indefinite-Delivery contracts, when a set-aside is restricted to verified SDVOSBs or VOSBs, it satisfies competition requirements.

In subpart 806.3—Other Than Full and Open Competition, we propose to revise the entire subpart to add specific reference to VA's authority for noncompetitive procedures for verified Veteran-owned small businesses and to clarify existing authorities regarding such noncompetitive procedures. The revised subpart would also

clarify existing statutory authority for other VA unique authorities and update new Title 41 citations and require other specific citation requirements.

We propose to amend section 806.302, Circumstances permitting other than full and open competition, to add several sections. We propose to revise 806.302-5, Authorized or required by statute, to remove its text and retain the title. The removed text has been revised and moved to 806.302-571.

Under 806.302-5, we propose to add two sections: 806.302-570 and 806.302-571. We propose to add 806.302-570, Noncompetitive procedures for verified Veteran-owned small businesses, to provide coverage of the authority to enter into contracts non-competitively, when specifically authorized under the VA Veterans First Contracting Program in accordance with VAAR 819.7007 or 819.7008. Paragraph (a) provides that justification and approval requirements of FAR 6.303 and 6.304, and internal agency review and approval thresholds set forth in VA internal procedures apply. Paragraph (b) provides the required updated 41 U.S.C. 3304(a)(5) citation, the specific authority under 38 U.S.C. 8127(b), and states that contracting officers may award a contract to a VIP verified SDVOSB first, then VOSB, using other than full and open competition, for contracts at or below the Simplified Acquisition Threshold (SAT). Paragraph (c) provides the proposed noncompetitive procedures for contracts above the SAT, as well as specific limitations that apply for actions over the SAT: the proposed SDVOSB or VOSB business must be responsible; the anticipated award price of the contract, including options, will exceed the SAT, but will not exceed \$5 million; and, contract award can be made at a fair and reasonable price that offers best value to the United States.

We also propose to add 806.302-571, Authorized or required by statute—VA

unique authorities, which would contain the statutes previously listed in 806.302-5 and provide policy under the statutes to make awards by other than full and open competition. Paragraph (a) provides the updated Title 41 authority – 41 U.S.C. 3304(a)(5), updated from the moved coverage under 806.302-5. Paragraph (b)(1) would provide that full and open competition is not required for the acquisition of prosthetic appliances and services based on the authority under 38 U.S.C. 8123. Paragraph (b)(2) would provide the existing policy for the acquisition of commercial health-care resources, use of medical equipment or space, or research acquired from an institution affiliated with VA under the authority set forth in 38 U.S.C. 8153(a)(3)(A). Paragraph (b)(3) would provide policy for the acquisition of commercial health-care resources, use of medical equipment or space from other than an affiliated institution, but only when conducted in accordance with simplified procedures in VAAR part 873, Simplified Acquisition Procedures for Health-Care Resources, under the authority set forth in 38 U.S.C. 8153(a)(3)(B). Paragraph (b)(4) would provide the authority under 38 U.S.C. 8153(a)(3)(C) for the sole source acquisition of commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution in accordance with paragraph (b)(2). The justification and approval requirements of FAR 6.303 and agency internal review procedures apply.

806.302-571, paragraph (c), would require that contracts awarded using the authority set forth under paragraph (a), with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304, and VA internal agency procedures.

806.302-571, paragraph (d), would incorporate an updated Title 41 citation

reference: 41 U.S.C. 3304(a)(5), and would also permit VA to procure certain supplies and services and require contracting officers, pursuant to FAR 6.302-5(c)(2)(ii), to comply with written justification and approval requirements set forth in FAR 6.303 and 6.304, citing 41 U.S.C. 3304(a)(5) and the applicable statute. Specifically, 806.302-571(d) contains authorities previously under 806.302-5 and would continue existing policy to allow VA to continue to enter into contracts for the following:

Scarce medical specialist services through contracts with 1) schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing; 2) clinics; and 3) any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel, in accordance with the authority of 38 U.S.C. 7409. We also propose to remove language that was previously codified that restricted such contracts to institutions affiliated with VA under 38 U.S.C. 7302 as no such restriction is contained in the statute for 38 U.S.C. 7409;

Purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service under the authority of 38 U.S.C. 7802(f);

Contracts or leases for the operation of parking facilities authorized by the Secretary or designee under the authority of 38 U.S.C. 8109(f);

Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions, under the authority of 38 U.S.C. 8122(c), when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial

sources; and

Contracts or agreements with private or public agencies or persons, including contracts for services of translators under the authority of 38 U.S.C. 513.

We propose to remove the authority currently listed in 806.302-5(a)(1), concerning VA ability to procure scarce medical specialist services, as an exception to full and open competition and place this authority in 806.302-571(d)(1) to require a written justification and approval before procuring services using the 38 U.S.C. 7409 authority. While 38 U.S.C. 7409 states that VA may procure scarce medical specialist services from certain persons and institutions identified in the statute, the statute does not contain language which expressly exempts these types of procurements from the competition requirements found in 41 U.S.C. 3301 et. seq. We propose to require that the use of this authority comply with written justification and approval requirements set forth in FAR 6.303 and 6.304 and cite 41 U.S.C. 3304(a)(5) and 38 U.S.C. 7409. We propose to remove 806.302-7, Public interest, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

We propose to remove 806.304, Approval of the justification, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

We propose to revise subpart 806.5—Competition Advocates, to amend the title to Advocates for Competition to conform to the revised title in FAR part 6.

We propose to revise 806.501, Requirement, to identify the Deputy Senior Procurement Executive as the VA Advocate for Competition.

We propose to remove 806.570, Planning requirements, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines "significant regulatory action" to mean any regulatory action that is

likely to result in a rule that may: “(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.”

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined this rule is a significant regulatory action under E.O. 12866, because it may create a serious inconsistency or otherwise interfere with an action taken or planned by another agency and raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date.

This proposed rule is not expected to be subject to the requirements of E.O. 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would generally be small business neutral. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA estimates that no cost impact to individual business would result from these rule updates. On this basis, the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any

rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 806

Government procurement.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on October 29, 2018, for publication.

Dated: December 21, 2018

Consuela Benjamin
Regulations Development Coordinator
Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

For the reasons set out in the preamble, VA proposes to revise 48 CFR part 806 to read as follows:

PART 806—COMPETITION REQUIREMENTS

Sec.

806.004-70 Definition.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.

806.270 Set-asides for verified Veteran-owned small businesses.

Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-570 Noncompetitive procedures for verified Veteran-owned small businesses.

806.302-571 Authorized or required by statute—VA unique authorities.

Subpart 806.5—Advocates for Competition

806.501 Requirement.

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 U.S.C. 3304; and 48 CFR 1.301-1.304.

806.004-70 Definition.

As used in this part—

Health-care resources has the same definition as that provided in VAAR 873.102.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules (FSS) are considered competitive when awarded in accordance with the procedures specified in FAR part 8 and this part.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.

(c) Subpart 819.5 and subpart 819.70 prescribe the policies and procedures that shall be followed with respect to set-asides for small business and Veteran-owned small business concerns.

806.270 Set-asides for verified Veteran-owned small businesses.

(a) To fulfill the statutory requirements relating to Public Law 109-461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127-8128), contracting officers shall set aside solicitations in accordance with 819.70 and the VA Rule of Two (see 802.101) for Vendor Information Pages (VIP) verified service-disabled Veteran-owned small businesses (SDVOSBs) and Veteran-owned small businesses (VOSBs) (see 819.7005 and 819.7006). (38 U.S.C. 8127-8128)

(b) This requirement to set aside procurements for VIP verified SDVOSBs and VOSBs applies to all types of contracts, including orders placed under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts, including Governmentwide acquisition contracts (GWACs). (38 U.S.C. 8127-8128)

806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-570 Noncompetitive procedures for verified Veteran-owned small businesses.

(a) Full and open competition need not be provided for when awarding a sole source contract under (b) or (c) of this section, to a verified SDVOSB or VOSB in accordance with 819.7007 or 819.7008, respectively, as authorized. Contracts awarded using this

authority shall be supported by justification and approval requirements of FAR 6.302-5(c)(2)(ii), 6.303 and 6.304.

(b) Sole source awards below the Simplified Acquisition Threshold. (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)). A contracting officer may award a contract under this authority to a VIP verified SDVOSB first, then VOSB if no SDVOSBs can fulfill the need, for an amount less than the simplified acquisition threshold, using procedures other than full and open competition. (38 U.S.C. 8127)

(c) Sole source awards above the Simplified Acquisition Threshold. (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a VIP verified SDVOSB first, then VOSB if no SDVOSB can satisfy the need, using procedures other than full and open competition when—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed \$5 million; and

(3) Contract award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127)

806.302-571 Authorized or required by statute—VA unique authorities.

(a) Authority. (1) Citation: 41 U.S.C. 3304(a)(5). Contracting officers shall also cite the specific authorities in paragraph (b) below for the statutes related to the products and services procured.

(2) Full and open competition need not be provided for when--a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source.

(b) Application. The following products and services are authorized to be acquired from a specified source:

(1) Prosthetic appliances and services. Contracting activities may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as determined to be proper, without regard to any other provision of law as set forth in VA directives governing prosthetic appliances, sensory aids and services supporting the same. (38 U.S.C. 8123)

(2) Commercial health-care resources, the use of medical equipment or space, or research, and acquired from an institution affiliated with the Department of Veterans Affairs. Contracting activities may procure health care resources, including medical practice groups and other approved entities associated with affiliated institutions, blood banks, organ banks, or research centers from an affiliated institution affiliated with VA in accordance with 38 U.S.C. 7302. Medical practice groups and other entities shall be approved when determined by the contracting activity to be legally associated with affiliated institutions. The justification and approval requirements of FAR 6.303 and paragraph (c) of this section do not apply. (38 U.S.C. 8153(a)(3)(A))

(3) Commercial health-care resources, the use of medical equipment or space, and is not to be acquired from an entity described in (b)(2) of this section. Contracting activities may procure health care resources from a non-affiliated institution only if the

procurement is conducted in accordance with the simplified procedures prescribed in part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(B))

(4) Commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution described in (b)(2) of this section and to be conducted on a sole source basis. This authority applies if not acquired from an affiliated institution in accordance with part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(C))

(c) Contracts awarded using this authority, with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304.

(d) When a contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 3304(a)(5) and the following authorities that apply, in the written justifications and approvals as required by FAR 6.303 and 6.304:

(1) Contracts for scarce medical specialist services. (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7409). Contracting officers may enter into contracts with (1) schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing; (2) clinics; and (3) any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel. (38 U.S.C. 7409)

(2) Contracts or agreements to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7802(f)). Contracts or agreements may be entered into without regard to 41 U.S.C. 6101(b) through (d).

(3) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b). (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8109(f)). Contracts or leases may be entered into provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee.

(4) Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions. (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8122(c)). Contracts may be entered into when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources.

(5) Contracts or agreements with private or public agencies or persons for translator services. (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 513).

Subpart 806.5—Advocates for Competition

806.501 Requirement.

The Deputy Senior Procurement Executive (DSPE) is designated as the VA Advocate for Competition. The DSPE may further delegate this authority to other VA officials. A complete list of VA procuring activity Advocates for Competition can be found at <https://www.va.gov/oal/business/pps/policy.asp>.